

Register, see section 10(c) of Pub. L. 93-43, set out as a note under section 2306 of this title.

§ 2308. Transportation of deceased veteran to a national cemetery

Where a veteran dies as the result of a service-connected disability, or is in receipt of (but for the receipt of retirement pay or pension under this title would have been entitled to) disability compensation, the Secretary may pay, in addition to any amount paid pursuant to section 2302 or 2307 of this title, the cost of transportation of the deceased veteran for burial in a national cemetery. Such payment shall not exceed the cost of transportation to the national cemetery nearest the veteran's last place of residence in which burial space is available.

(Added Pub. L. 94-433, title III, §304(a), Sept. 30, 1976, 90 Stat. 1377, §908; amended Pub. L. 101-237, title III, §313(b)(1), Dec. 18, 1989, 103 Stat. 2077; renumbered §2308 and amended Pub. L. 102-83, §5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406.)

AMENDMENTS

1991—Pub. L. 102-83 renumbered section 908 of this title as this section and substituted “2302 or 2307” for “902 or 907”.

1989—Pub. L. 101-237 substituted “Secretary” for “Administrator”.

EFFECTIVE DATE

Section effective Oct. 1, 1976, see section 406 of Pub. L. 94-433, set out as an Effective Date of 1976 Amendment note under section 1101 of this title.

CHAPTER 24—NATIONAL CEMETERIES AND MEMORIALS

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AMENDMENTS

2004—Pub. L. 108-454, title VI, §602(b), Dec. 10, 2004, 118 Stat. 3624, added item 2412.

1998—Pub. L. 105-368, title IV, §403(c)(4), (d)(1), Nov. 11, 1998, 112 Stat. 3338, 3339, substituted “Administration; composition of Administration” for “System; composition of such system; appointment of director” in item 2400 and “Administration” for “System” in item 2411.

1997—Pub. L. 105-116, §1(b), Nov. 21, 1997, 111 Stat. 2382, added item 2411.

1991—Pub. L. 102-83, §5(b)(1), Aug. 6, 1991, 105 Stat. 406, renumbered items 1000 to 1010 as 2400 to 2410, respectively.

1989—Pub. L. 101-237, title V, §502(b), Dec. 18, 1989, 103 Stat. 2093, added item 1010.

1986—Pub. L. 99-576, title IV, §413(b), Oct. 28, 1986, 100 Stat. 3284, added item 1009.

1978—Pub. L. 95-476, title II, §202(b)(2), Oct. 18, 1978, 92 Stat. 1505, added item 1008.

§ 2400. Establishment of National Cemetery Administration; composition of Administration

(a) There shall be within the Department a National Cemetery Administration responsible for the interment of deceased servicemembers and veterans. The National Cemetery Administration shall be headed by the Under Secretary for Memorial Affairs, who shall perform such functions as may be assigned by the Secretary.

(b) The national cemeteries and other facilities under the control of the National Cemetery Administration shall consist of—

(1) national cemeteries transferred from the Department of the Army to the Veterans' Administration by the National Cemeteries Act of 1973;

(2) cemeteries under the jurisdiction of the Veterans' Administration on the date of enactment of this chapter; and

(3) any other cemetery, memorial, or monument transferred to the Veterans' Administration by the National Cemeteries Act of 1973, or later acquired or developed by the Secretary.

(Added Pub. L. 93-43, §2(a), June 18, 1973, 87 Stat. 75, §1000; amended Pub. L. 99-576, title VII, §701(52), Oct. 28, 1986, 100 Stat. 3295; Pub. L. 100-527, §13(i), Oct. 25, 1988, 102 Stat. 2644; Pub. L. 101-237, title III, §313(b)(1), Dec. 18, 1989, 103 Stat. 2077; renumbered §2400 and amended Pub. L. 102-83, §§4(a)(3), (4), 5(a), Aug. 6, 1991, 105 Stat. 404, 406; Pub. L. 105-368, title IV, §403(c)(3), Nov. 11, 1998, 112 Stat. 3338.)

REFERENCES IN TEXT

The National Cemeteries Act of 1973, referred to in subsec. (b)(1), (3), is Pub. L. 93-43, June 18, 1973, 87 Stat. 75, as amended, which is classified principally to this chapter (§2400 et seq.). For complete classification of this Act to the Code, see section 1 of Pub. L. 93-43 set out as a Short Title of 1973 Amendment note under section 101 of this title and Tables.

For national cemeteries transferred from the Department of the Army to the Veterans' Administration by the National Cemeteries Act of 1973, and any other cemetery, memorial, or monument transferred to the Veterans' Administration by the National Cemeteries Act of 1973, referred to in subsec. (b)(1), (3), see Transfer of Functions note set out under section 2404 of this title.

The date of enactment of this chapter, referred to in subsec. (b)(2), is the date of enactment of Pub. L. 93-43, which was approved June 18, 1973.

AMENDMENTS

1998—Pub. L. 105-368, §403(c)(3)(C), substituted “Administration; composition of Administration” for “System; composition of such system; appointment of director” in section catchline.

Subsec. (a). Pub. L. 105-368, §403(c)(3)(A), in first sentence, substituted “Administration responsible” for “System” and, in second sentence, substituted “The National Cemetery Administration shall be headed by the Under Secretary for Memorial Affairs” for “Such system shall be headed by the Director of the National Cemetery System”.

Subsec. (b). Pub. L. 105-368, §403(c)(3)(B), substituted “national cemeteries and other facilities under the

control of the National Cemetery Administration" for "National Cemetery System" in introductory provisions.

1991—Pub. L. 102-83, §5(a), renumbered section 1000 of this title as this section.

Subsec. (a). Pub. L. 102-83, §4(a)(3), (4), substituted "Department" for "Veterans' Administration".

1989—Subsec. (b)(3). Pub. L. 101-237 substituted "Secretary" for "Administrator".

1988—Subsec. (a). Pub. L. 100-527 substituted "Such system shall be headed by the Director of the National Cemetery System, who shall perform such functions as may be assigned by the Secretary" for "The Administrator may appoint a Director, National Cemetery System, who shall perform such functions as may be assigned by the Administrator".

1986—Subsec. (a). Pub. L. 99-576 substituted "servicemembers" for "servicemen" and "The Administrator" for "To assist him in carrying out his responsibilities in administering the cemeteries within the System, the Administrator".

CHANGE OF NAME

Pub. L. 105-368, title IV, §403(a)(1), Nov. 11, 1998, 112 Stat. 3337, provided that: "The National Cemetery System of the Department of Veterans Affairs shall hereafter be known and designated as the National Cemetery Administration. The position of Director of the National Cemetery System is hereby redesignated as Under Secretary of Veterans Affairs for Memorial Affairs."

Pub. L. 105-368, title IV, §403(d), Nov. 11, 1998, 112 Stat. 3339, provided that:

"(1) Any reference in a law, map, regulation, document, paper, or other record of the United States to the National Cemetery System shall be deemed to be a reference to the National Cemetery Administration.

"(2) Any reference in a law, map, regulation, document, paper, or other record of the United States to the Director of the National Cemetery System shall be deemed to be a reference to the Under Secretary of Veterans Affairs for Memorial Affairs."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-527 effective Mar. 15, 1989, see section 18(a) of Pub. L. 100-527, set out as a Department of Veterans Affairs Act note under section 301 of this title.

EFFECTIVE DATE

Section 10(a) of Pub. L. 93-43 provided that: "The first section [set out as a Short Title of 1973 Amendment note under section 101 of this title] and sections 2 [enacting this chapter and amending section 5316 of Title 5, Government Organization and Employees], 3 [set out as a note under section 2404 of this title], 4 [enacting section 218 and repealing section 625 of this title], and 8 [amending section 3505 [now 6105] of this title] of this Act shall take effect on the date of enactment of this Act [June 18, 1973]."

SHORT TITLE

For short title of Pub. L. 93-43, June 18, 1973, 87 Stat. 75, which enacted this chapter, as the "National Cemeteries Act of 1973", see section 1 of Pub. L. 93-43 set out as a Short Title of 1973 Amendment note under section 101 of this title.

NATIONAL CEMETERY EXPANSION

Pub. L. 108-109, Nov. 11, 2003, 117 Stat. 1322, provided that:

"SECTION 1. SHORT TITLE.

"This Act may be cited as the 'National Cemetery Expansion Act of 2003'.

"SEC. 2. ESTABLISHMENT OF NEW NATIONAL CEMETERIES.

"(a) ESTABLISHMENT.—Not later than 4 years after the date of the enactment of this Act [Nov. 11, 2003], the

Secretary of Veterans Affairs, in accordance with chapter 24 of title 38, United States Code, shall establish six new national cemeteries. The new cemeteries shall be located in the following locations (those locations having been determined by the Secretary of Veterans Affairs to be the most appropriate locations for new national cemeteries):

"(1) Southeastern Pennsylvania.

"(2) The Birmingham, Alabama, area.

"(3) The Jacksonville, Florida, area.

"(4) The Bakersfield, California, area.

"(5) The Greenville/Columbia, South Carolina, area.

"(6) The Sarasota County, Florida, area.

"(b) FUNDS.—Amounts appropriated for the Department of Veterans Affairs for any fiscal year after fiscal year 2003 for Advance Planning shall be available for the purposes of subsection (a).

"(c) SITE SELECTION PROCESS.—In determining the specific sites for the new cemeteries required by subsection (a) within the locations specified in that subsection, the Secretary shall solicit the advice and views of representatives of State and local veterans organizations and other individuals as the Secretary considers appropriate.

"(d) INITIAL REPORT.—Not later than 120 days after the date of the enactment of this Act [Nov. 11, 2003], the Secretary shall submit to Congress a report on the establishment of the national cemeteries required by subsection (a). The report shall—

"(1) set forth a schedule for the establishment of each such cemetery and an estimate of the costs associated with the establishment of each such cemetery; and

"(2) identify the amount of Advance Planning Funds obligated for purposes of this section as of the submission of the report.

"(e) ANNUAL REPORTS.—The Secretary shall submit to Congress an annual report on the implementation of this section until the establishment of all six cemeteries is completed and each such cemetery has opened. The Secretary shall include in each such annual report an update of the information provided under paragraphs (1) and (2) of subsection (d).

"(f) DEFINITION OF SOUTHEASTERN PENNSYLVANIA.—In this section, the term 'southeastern Pennsylvania' means the city of Philadelphia and Berks County, Bucks County, Chester County, Delaware County, Philadelphia County, and Montgomery County in the State of Pennsylvania."

ESTABLISHMENT OF ADDITIONAL NATIONAL CEMETERIES

Pub. L. 106-117, title VI, §611, Nov. 30, 1999, 113 Stat. 1580, provided that:

"(a) ESTABLISHMENT.—The Secretary [of Veterans Affairs] shall establish, in accordance with chapter 24 of title 38, United States Code, a national cemetery in each of the six areas in the United States that the Secretary determines to be most in need of such a cemetery to serve the needs of veterans and their families.

"(b) OBLIGATION OF FUNDS IN FISCAL YEAR 2000.—The Secretary shall obligate, from the advance planning fund in the Construction, Major Projects account appropriated to the Department [of Veterans Affairs] for fiscal year 2000, such amounts for costs that the Secretary estimates are required for the planning and commencement of the establishment of national cemeteries under this section.

"(c) REPORTS.—(1) Not later than 120 days after the date of the enactment of this Act [Nov. 30, 1999], the Secretary shall submit to Congress a report on the establishment of the national cemeteries under subsection (a). The report shall set forth the following:

"(A) The six areas of the United States determined by the Secretary to be most in need of the establishment of a new national cemetery.

"(B) A schedule for such establishment.

"(C) An estimate of the costs associated with such establishment.

"(D) The amount obligated from the advance planning fund under subsection (b).

“(2) Not later than one year after the date on which the report described in paragraph (1) is submitted, and annually thereafter until the establishment of the national cemeteries under subsection (a) is complete, the Secretary shall submit to Congress a report that updates the information included in the report described in paragraph (1).”

REIMBURSEMENT OF ACCOUNT

Pub. L. 105-276, title I, Oct. 21, 1998, 112 Stat. 2466, provided in part: “That during fiscal year 1999, or in subsequent fiscal years, the ‘Construction, major projects’ account shall be reimbursed, in the amount transferred, from other funds as they become part of the Pershing Hall Revolving Fund.”

TRANSFER OF PERSHING HALL TO DEPARTMENT OF VETERANS AFFAIRS

Pub. L. 102-86, title IV, § 403, Aug. 14, 1991, 105 Stat. 422, as amended by Pub. L. 103-79, § 4, Aug. 13, 1993, 107 Stat. 772; Pub. L. 103-446, title XII, § 1202(c), Nov. 2, 1994, 108 Stat. 4689; Pub. L. 107-217, § 3(o), Aug. 21, 2002, 116 Stat. 1303; Pub. L. 107-330, title III, § 308(i), Dec. 6, 2002, 116 Stat. 2829, provided that:

“(a) IN GENERAL.—Pershing Hall, an existing memorial in Paris, France, owned by the United States, together with the personal property of such memorial, is hereby placed under the jurisdiction, custody, and control of the Department of Veterans Affairs so that the memorial to the commander-in-chief, officers, men, and auxiliary services of the American Expeditionary Forces in France during World War I may be continued in an appropriate manner and financial support be provided therefor.

“(b) ADMINISTRATION.—(1)(A) The Secretary of Veterans Affairs shall administer, operate, develop, and improve Pershing Hall and its site in such manner as the Secretary determines is in the best interests of the United States, which may include use of Pershing Hall to meet the needs of veterans. To meet such needs, the Secretary may establish and operate a regional or other office to disseminate information, respond to inquiries, and otherwise assist veterans and their families in obtaining veterans' benefits.

“(B) To carry out the purposes of this section, the Secretary may enter into agreements authorized by subsection (c) to fund the operation of the memorial and projects authorized by subsection (d)(6).

“(2)(A) The Secretary shall, after consultation with the American Battle Monuments Commission, provide for a portion of Pershing Hall to be specifically dedicated, with appropriate exhibitions and monuments, to the memory of the commander-in-chief, officers, men, and auxiliary services of the American Expeditionary Forces in France during World War I.

“(B) The establishment and continuing supervision of the memorial that is dedicated pursuant to subparagraph (A) shall be carried out by the American Battle Monuments Commission.

“(3) To the extent that funds are available in the Pershing Hall Revolving Fund established by subsection (d), the Secretary may incur such expenses with respect to Pershing Hall as the Secretary determines necessary or appropriate.

“(4) The Secretary of Veterans Affairs may provide the allowances and benefits described in section 707 of title 38, United States Code, to personnel of the Department of Veterans Affairs who are United States citizens and are assigned by the Secretary to Pershing Hall.

“(c) LEASES.—(1) The Secretary may enter into agreements as the Secretary determines necessary or appropriate for the operation, development, and improvement of Pershing Hall and its site, including the leasing of portions of the Hall for terms not to exceed 99 years in areas that are newly constructed or substantially rehabilitated and for not to exceed 20 years in other areas of the Hall.

“(2) Leases entered into by the Secretary under this subsection shall be for consideration in the form of

cash or in-kind, or a combination of the two, as determined by the Secretary, which shall include the value of space leased back to the Secretary by the lessee, net of rent paid by the Secretary, and the present value of the residual interest of the Secretary at the end of the lease term.

“(d) FUND.—(1) There is hereby established the Pershing Hall Revolving Fund to be administered by the Secretary of Veterans Affairs.

“(2) There shall be transferred to the Pershing Hall Revolving Fund, at such time or times as the Secretary may determine without limitation as to year, amounts as determined by the Secretary, not to exceed \$1,000,000 in total, from funds appropriated to the Department of Veterans Affairs for the construction of major projects. The account from which any such amount is transferred shall be reimbursed promptly from other funds as they become part of the Pershing Hall Revolving Fund.

“(3) The Pershing Hall Memorial Fund, established in the Treasury of the United States pursuant to section 2 of the Act of June 28, 1935 (Public Law 74-171; 49 Stat. 426) [former 36 U.S.C. 491], is hereby abolished and the corpus of the fund, including accrued interest, is transferred to the Pershing Hall Revolving Fund.

“(4) Funds received by the Secretary from operation of Pershing Hall or from any lease or other agreement with respect to Pershing Hall shall be deposited in the Pershing Hall Revolving Fund.

“(5) The Secretary of the Treasury shall invest any portion of the Revolving Fund that, as determined by the Secretary of Veterans Affairs, is not required to meet current expenses of the Fund. Each investment shall be made in an interest bearing obligation of the United States or an obligation guaranteed as to principal and interest by the United States that, as determined by the Secretary of Veterans Affairs, has a maturity suitable for the Revolving Fund. The Secretary of the Treasury shall credit to the Revolving Fund the interest on, and the proceeds from the sale or redemption of, such obligations.

“(6)(A) Subject to subparagraphs (B) and (C), the Secretary of Veterans Affairs may expend not more than \$100,000 from the Fund in any fiscal year upon projects, activities, and facilities determined by the Secretary to be in keeping with the mission of the Department.

“(B) An expenditure under subparagraph (A) may be made only from funds that will remain in the Fund in any fiscal year after payment of expenses incurred with respect to Pershing Hall for such fiscal year and only after the reimbursement of all amounts transferred to the Fund under subsection (d)(2) has been completed.

“(C) An expenditure authorized by subparagraph (A) shall be reported by the Secretary to the Congress no later than November 1 of each year for the fiscal year ending on the previous September 30.

“(e) WAIVER.—The Secretary may carry out the provisions of this section without regard to section 8122 of title 38, United States Code, subchapter II of chapter 5 of title 40, United States Code, sections 541 through 555 and 1302 of title 40, United States Code, or any other provision of law inconsistent with this section.”

[Section 3(o) of Pub. L. 107-217, which directed amendment of section 403(e) of Pub. L. 102-86, set out above, by substituting “subchapter II of chapter 5 of title 40, sections 541-555 and 1302 of title 40” for “section 303b of title 40, sections 483 and 484 of title 40”, could not be executed.]

[Section 403 of Pub. L. 102-86, set out above, was classified to section 493 of former Title 36 prior to the general revision and enactment of Title 36, Patriotic and National Observances, Ceremonies, and Organizations, by Pub. L. 105-225, § 1, Aug. 12, 1998, 112 Stat. 1253.]

AUTHORITY TO ESTABLISH NATIONAL CEMETERIES

Section 414 of Pub. L. 99-576 provided that:

“(a) AUTHORITY.—The authority of the Administrator of Veterans' Affairs [now Secretary of Veterans Affairs] under chapter 24 of title 38, United States Code, to develop and acquire cemeteries as part of the National

Cemetery System [now National Cemetery Administration] includes, but is not limited to, the authority to establish additional national cemeteries to serve the needs of veterans and their families in—

- “(1) San Francisco, California;
- “(2) Chicago, Illinois;
- “(3) Cleveland, Ohio;
- “(4) Pittsburgh, Pennsylvania;
- “(5) Dallas/Fort Worth, Texas;
- “(6) Miami, Florida;
- “(7) Seattle, Washington;
- “(8) Atlanta, Georgia;
- “(9) Phoenix/Tucson, Arizona;
- “(10) Birmingham, Alabama; and
- “(11) any other State in which a national cemetery is not available for the burial of veterans.

“(b) LAND ACQUISITION.—The Administrator [now Secretary] may acquire land necessary for a cemetery authorized by subsection (a) of this section by donation, purchase, condemnation, exchange of lands in the United States public domain, or otherwise.”

§ 2401. Advisory Committee on Cemeteries and Memorials

There shall be appointed by the Secretary an Advisory Committee on Cemeteries and Memorials. The Secretary shall advise and consult with the Committee from time to time with respect to the administration of the cemeteries for which the Secretary is responsible, and with respect to the selection of cemetery sites, the erection of appropriate memorials, and the adequacy of Federal burial benefits. The Committee shall make periodic reports and recommendations to the Secretary and to Congress.

(Added Pub. L. 93-43, § 2(a), June 18, 1973, 87 Stat. 75, § 1001; amended Pub. L. 99-576, title VII, § 701(53), Oct. 28, 1986, 100 Stat. 3295; Pub. L. 101-237, title III, § 313(b)(1), Dec. 18, 1989, 103 Stat. 2077; renumbered § 2401, Pub. L. 102-83, § 5(a), Aug. 6, 1991, 105 Stat. 406.)

AMENDMENTS

1991—Pub. L. 102-83 renumbered section 1001 of this title as this section.

1989—Pub. L. 101-237 substituted “Secretary” for “Administrator” wherever appearing.

1986—Pub. L. 99-576 substituted “the Administrator” for “he” before “is responsible”.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103-7 (in which a periodic report to Congress on the Advisory Committee on Cemeteries and Memorials is listed on page 145), see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

§ 2402. Persons eligible for interment in national cemeteries

Under such regulations as the Secretary may prescribe and subject to the provisions of sec-

tion 6105 of this title, the remains of the following persons may be buried in any open national cemetery under the control of the National Cemetery Administration:

(1) Any veteran (which for the purposes of this chapter includes a person who died in the active military, naval, or air service).

(2) Any member of a Reserve component of the Armed Forces, and any member of the Army National Guard or the Air National Guard, whose death occurs under honorable conditions while such member is hospitalized or undergoing treatment, at the expense of the United States, for injury or disease contracted or incurred under honorable conditions while such member is performing active duty for training, inactive duty training, or undergoing that hospitalization or treatment at the expense of the United States.

(3) Any member of the Reserve Officers' Training Corps of the Army, Navy, or Air Force whose death occurs under honorable conditions while such member is—

(A) attending an authorized training camp or on an authorized practice cruise;

(B) performing authorized travel to or from that camp or cruise; or

(C) hospitalized or undergoing treatment, at the expense of the United States, for injury or disease contracted or incurred under honorable conditions while such member is—

(i) attending that camp or on that cruise;

(ii) performing that travel; or

(iii) undergoing that hospitalization or treatment at the expense of the United States.

(4) Any citizen of the United States who, during any war in which the United States is or has been engaged, served in the armed forces of any government allied with the United States during that war, and whose last such service terminated honorably.

(5) The spouse, surviving spouse (which for purposes of this chapter includes a surviving spouse who had a subsequent remarriage), minor child (which for purposes of this chapter includes a child under 21 years of age, or under 23 years of age if pursuing a course of instruction at an approved educational institution), and, in the discretion of the Secretary, unmarried adult child of any of the persons listed in paragraphs (1) through (4) and paragraph (7).

(6) Such other persons or classes of persons as may be designated by the Secretary.

(7) Any person who at the time of death was entitled to retired pay under chapter 1223 of title 10 or would have been entitled to retired pay under that chapter but for the fact that the person was under 60 years of age.

(8) Any individual whose service is described in subsection (a) or (b) of section 107 of this title if such individual at the time of death—

(A) was a citizen of the United States or an alien lawfully admitted for permanent residence in the United States; and

(B) resided in the United States.

(Added Pub. L. 93-43, § 2(a), June 18, 1973, 87 Stat. 75, § 1002; amended Pub. L. 99-576, title VII, § 701(54), Oct. 28, 1986, 100 Stat. 3295; Pub. L. 101-237, title III, § 313(b)(1), Dec. 18, 1989, 103 Stat.

2077; Pub. L. 102-40, title IV, §402(d)(1), May 7, 1991, 105 Stat. 239; renumbered §2402, Pub. L. 102-83, §5(a), Aug. 6, 1991, 105 Stat. 406; Pub. L. 103-240, §1, May 4, 1994, 108 Stat. 609; Pub. L. 103-446, title VIII, §§801, 802, Nov. 2, 1994, 108 Stat. 4675; Pub. L. 104-275, title II, §211, Oct. 9, 1996, 110 Stat. 3330; Pub. L. 105-368, title IV, §403(c)(5), Nov. 11, 1998, 112 Stat. 3338; Pub. L. 106-419, title III, §331(a), title IV, §404(a)(5), Nov. 1, 2000, 114 Stat. 1856, 1865; Pub. L. 108-183, title II, §212(b), title V, §502(a), Dec. 16, 2003, 117 Stat. 2658, 2667.)

AMENDMENTS

2003—Par. (5). Pub. L. 108-183, §502(a), substituted “(which for purposes of this chapter includes a surviving spouse who had a subsequent remarriage)” for “(which for purposes of this chapter includes an unremarried surviving spouse who had a subsequent remarriage which was terminated by death or divorce)”.

Par. (8). Pub. L. 108-183, §212(b), substituted “subsection (a) or (b) of section 107” for “section 107(a)”.

2000—Par. (7). Pub. L. 106-419, §404(a)(5), substituted “chapter 1223 of title 10” for “chapter 67 of title 10”.

Par. (8). Pub. L. 106-419, §331(a), added par. (8).

1998—Pub. L. 105-368 substituted “under the control of the National Cemetery Administration” for “in the National Cemetery System” in introductory provisions.

1996—Par. (5). Pub. L. 104-275 inserted “(which for purposes of this chapter includes a child under 21 years of age, or under 23 years of age if pursuing a course of instruction at an approved educational institution)” after “minor child”.

1994—Par. (5). Pub. L. 103-446 inserted “spouse,” after “The” and “(which for purposes of this chapter includes an unremarried surviving spouse who had a subsequent remarriage which was terminated by death or divorce)” after “surviving spouse”.

Pub. L. 103-240, §1(b), inserted “and paragraph (7)” after “paragraphs (1) through (4)”.

Par. (7). Pub. L. 103-240, §1(a), added par. (7).

1991—Pub. L. 102-83 renumbered section 1002 of this title as this section.

Pub. L. 102-40 substituted “6105” for “3505” in introductory provisions.

1989—Pub. L. 101-237 substituted “Secretary” for “Administrator” wherever appearing.

1986—Pars. (2), (3). Pub. L. 99-576, §701(54)(A), substituted “while such member” for “while he” wherever appearing.

Par. (5). Pub. L. 99-576, §701(54)(B), struck out “wife, husband,” before “surviving spouse”.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by section 212(b) of Pub. L. 108-183 applicable with respect to deaths occurring on or after Dec. 16, 2003, see section 212(c) of Pub. L. 108-183, set out as a note under section 107 of this title.

Pub. L. 108-183, title V, §502(b), Dec. 16, 2003, 117 Stat. 2667, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to deaths occurring on or after January 1, 2000.”

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by section 331(a) of Pub. L. 106-419 applicable with respect to deaths occurring on or after Nov. 1, 2000, see section 331(c) of Pub. L. 106-419, set out as a note under section 107 of this title.

ELIGIBILITY OF FORMER PRISONERS OF WAR FOR BURIAL IN ARLINGTON NATIONAL CEMETERY

Pub. L. 103-160, div. A, title XI, §1176, Nov. 30, 1993, 107 Stat. 1768, provided that:

“(a) **ELIGIBILITY FOR BURIAL.**—Former prisoners of war described in subsection (b) are eligible for burial in Arlington National Cemetery, Arlington, Virginia.

“(b) **ELIGIBLE FORMER POWS.**—A former prisoner of war referred to in subsection (a) is a former prisoner of war—

“(1) who dies on or after the date of the enactment of this Act [Nov. 30, 1993]; and

“(2) who, while a prisoner of war, served honorably in the active military, naval, or air service, as determined under regulations prescribed by the Secretary of the military department concerned.

“(c) **SAVINGS PROVISION.**—This section may not be construed to make ineligible for burial in Arlington National Cemetery a former prisoner of war who is eligible to be buried in that cemetery under another provision of law.

“(d) **REGULATIONS.**—This section shall be carried out under regulations prescribed by the Secretary of the Army. Those regulations may prescribe a minimum period of interment as a prisoner of war for purposes of eligibility under this section for burial in Arlington National Cemetery.

“(e) **DEFINITIONS.**—For purposes of this section:

“(1) The term ‘former prisoner of war’ has the meaning given such term in section 101(32) of title 38, United States Code.

“(2) The term ‘active military, naval, or air service’ has the meaning given such term in section 101(24) of such title.”

§ 2403. Memorial areas

(a) The Secretary shall set aside, when available, suitable areas in national cemeteries to honor the memory of members of the Armed Forces and veterans—

(1) who are missing in action;

(2) whose remains have not been recovered or identified;

(3) whose remains were buried at sea, whether by the member's or veteran's own choice or otherwise;

(4) whose remains were donated to science; or

(5) whose remains were cremated and the ashes scattered without interment of any portion of the ashes.

(b) Under regulations prescribed by the Secretary, group memorials may be placed to honor the memory of groups of individuals referred to in subsection (a), and appropriate memorial headstones and markers may be placed to honor the memory of individuals referred to in subsection (a) and section 2306(b) of this title.

(c) All national and other veterans' cemeteries under the control of the National Cemetery Administration shall be considered national shrines as a tribute to our gallant dead and, notwithstanding the provisions of any other law, the Secretary is hereby authorized to permit appropriate officials to fly the flag of the United States of America at such cemeteries twenty-four hours each day.

(Added Pub. L. 93-43, §2(a), June 18, 1973, 87 Stat. 76, §1003; amended Pub. L. 97-66, title VI, §603(b), Oct. 17, 1981, 95 Stat. 1034; Pub. L. 97-295, §4(34), Oct. 12, 1982, 96 Stat. 1307; Pub. L. 101-237, title III, §313(b)(1), Dec. 18, 1989, 103 Stat. 2077; renumbered §2403, Pub. L. 102-83, §5(a), Aug. 6, 1991, 105 Stat. 406; Pub. L. 105-368, title IV, §§401(c), 403(c)(6), Nov. 11, 1998, 112 Stat. 3335, 3339.)

REFERENCES IN TEXT

For cemeteries under the control of the National Cemetery Administration, referred to in subsec. (c), see section 2400(b) of this title.

AMENDMENTS

1998—Subsec. (b). Pub. L. 105-368, §401(c), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "Under regulations prescribed by the Secretary, appropriate memorials or markers shall be erected to honor the memory of those individuals, or group of individuals, referred to in subsection (a) of this section."

Subsec. (c). Pub. L. 105-368, §403(c)(6), substituted "under the control of the National Cemetery Administration" for "in the National Cemetery System created by this chapter".

1991—Pub. L. 102-83 renumbered section 1003 of this title as this section.

1989—Pub. L. 101-237 substituted "Secretary" for "Administrator" wherever appearing.

1982—Subsec. (c). Pub. L. 97-295 substituted "chapter" for "Act" after "created by this".

1981—Subsec. (a). Pub. L. 97-66 substituted provisions relating to members of the Armed Forces and veterans, for provisions that related only to members of the Armed Forces, struck out provisions limiting the subsection to persons who died or were killed while serving in the Armed Forces, and inserted provisions relating to persons whose remains have not been recovered, whose remains were donated to science, or whose remains were cremated and the ashes scattered without interment of any portion of the ashes.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-66 applicable with respect to veterans dying before, on, or after Oct. 17, 1981, see section 701(b)(6) of Pub. L. 97-66, set out as a note under section 1114 of this title.

§ 2404. Administration

(a) The Secretary is authorized to make all rules and regulations which are necessary or appropriate to carry out the provisions of this chapter, and may designate those cemeteries which are considered to be national cemeteries.

(b) In conjunction with the development and administration of cemeteries for which the Secretary is responsible, the Secretary shall provide all necessary facilities including, as necessary, superintendents' lodges, chapels, crypts, mausoleums, and columbaria.

(c)(1) Subject to paragraph (2), each grave in a national cemetery shall be marked with an appropriate marker. Such marker shall bear the name of the person buried, the number of the grave, and such other information as the Secretary shall by regulation prescribe.

(2) The grave markers referred to in paragraph (1) shall be upright for interments that occur on or after January 1, 1987, except that—

(A) in the case of any cemetery scheduled to be closed by September 30, 1991, as indicated in the documents submitted by the Administrator of Veterans' Affairs to the Congress in justification for the amounts included for Veterans' Administration programs in the President's Budget for fiscal year 1987, the Secretary may provide for flat grave markers;

(B) in the case of any cemetery with a section which has flat markers on October 28, 1986, the Secretary may continue to provide for flat grave markers in such section;

(C) in the case of any cemetery located on the grounds of or adjacent to a Department health-care facility, the Secretary may provide for flat grave markers; and

(D) in the case of grave sites of cremated remains that are interred in the ground, the Secretary may provide for flat grave markers.

(d) There shall be kept in each national cemetery, and at the main office of the Department, a register of burials in each cemetery setting forth the name of each person buried in the cemetery, the number of the grave in which the veteran is buried, and such other information as the Secretary by regulation may prescribe.

(e) In carrying out the Secretary's responsibilities under this chapter, the Secretary may contract with responsible persons, firms, or corporations for the care and maintenance of such cemeteries under the Secretary's jurisdiction as the Secretary shall choose, under such terms and conditions as the Secretary may prescribe.

(f)(1) The Secretary is authorized to convey to any State, or political subdivision thereof, in which any national cemetery is located, all right, title, and interest of the United States in and to any Government owned or controlled approach road to such cemetery if, prior to the delivery of any instrument of conveyance, the State or political subdivision to which such conveyance is to be made notifies the Secretary in writing of its willingness to accept and maintain the road included in such conveyance. Upon the execution and delivery of such a conveyance, the jurisdiction of the United States over the road conveyed shall cease and thereafter vest in the State or political subdivision concerned.

(2) The Secretary may, to the extent of appropriated funds available for such purpose, make a contribution to local authorities for the construction of road improvements or traffic controls or other devices on land adjacent to a national cemetery if the Secretary determines that such a contribution is essential to ensure safe ingress to or egress from the cemetery.

(g) Notwithstanding any other provision of law, the Secretary may at such time as the Secretary deems desirable, relinquish to the State in which any cemetery, monument, or memorial under the Secretary's jurisdiction is located, such portion of legislative jurisdiction over the lands involved as is necessary to establish concurrent jurisdiction between the Federal Government and the State concerned. Such partial relinquishment of jurisdiction under the authority of this subsection may be made by filing with the Governor of the State involved a notice of such relinquishment and shall take effect upon acceptance thereof by the State in such manner as its laws may prescribe.

(Added Pub. L. 93-43, §2(a), June 18, 1973, 87 Stat. 76, §1004; amended Pub. L. 99-576, title IV, §411, title VII, §701(55), Oct. 28, 1986, 100 Stat. 3283, 3295; Pub. L. 100-322, title III, §§341(a), 342, May 20, 1988, 102 Stat. 539, 540; Pub. L. 101-237, title III, §313(b)(1), Dec. 18, 1989, 103 Stat. 2077; Pub. L. 102-54, §14(b)(21), June 13, 1991, 105 Stat. 284; renumbered §2404 and amended Pub. L. 102-83, §§4(a)(3), (4), (b)(7), 5(a), Aug. 6, 1991, 105 Stat. 404-406.)

AMENDMENTS

1991—Pub. L. 102-83, §5(a), renumbered section 1004 of this title as this section.

Subsec. (c)(2)(A). Pub. L. 102-83, §4(b)(7), substituted "Administrator of Veterans' Affairs" for "Secretary".

Subsec. (c)(2)(B). Pub. L. 102-54 substituted "October 28, 1986" for "the date of the enactment of the Veterans' Benefits Improvement and Health-Care Authorization Act of 1986".

Subsec. (c)(2)(C). Pub. L. 102-83, §4(a)(3), (4), substituted "Department" for "Veterans' Administration".

Subsec. (d). Pub. L. 102-83, §4(a)(3), (4), substituted "Department" for "Veterans' Administration".

1989—Pub. L. 101-237 substituted "Secretary" and "Secretary's" for "Administrator" and "Administrator's", respectively, wherever appearing.

1988—Subsec. (c)(2)(C), (D). Pub. L. 100-322, §341(a), added subpars. (C) and (D).

Subsec. (f). Pub. L. 100-322, §342, designated existing provisions as par. (1) and added par. (2).

1986—Subsec. (b). Pub. L. 99-576, §701(55)(B), substituted "the Administrator" for "he" before "is responsible".

Subsec. (c). Pub. L. 99-576, §411, designated existing provisions as par. (1), substituted "Subject to paragraph (2), each" for "Each", and added par. (2).

Subsec. (d). Pub. L. 99-576, §701(55)(A), substituted "the veteran" for "he".

Subsecs. (e), (g). Pub. L. 99-576, §701(55)(B), (C), substituted "the Administrator" and "the Administrator's" for "he" and "his", respectively, wherever appearing.

TRANSFER OF FUNCTIONS

Section 6 of Pub. L. 93-43 provided that:

"[*Jurisdiction*] (a)(1) There are hereby transferred from the Secretary of the Army to the Administrator of Veterans' Affairs all jurisdiction over, and responsibility for, (A) all national cemeteries (except the cemetery at the United States Soldiers' and Airmen's Home and Arlington National Cemetery), and (B) any other cemetery (including burial plots), memorial, or monument under the jurisdiction of the Secretary of the Army immediately preceding the effective date of this section [see note hereunder] (except the cemetery located at the United States Military Academy at West Point) which the President determines would be appropriate in carrying out the purposes of this Act [see Tables for classification].

"(2) There are hereby transferred from the Secretary of the Navy and the Secretary of the Air Force to the Administrator of Veterans' Affairs all jurisdiction over, and responsibility for, any cemetery (including burial plots), memorial, or monument under the jurisdiction of either Secretary immediately preceding the effective date of this section [see note hereunder] (except those cemeteries located at the United States Naval Academy at Annapolis, the United States Naval Home Cemetery at Philadelphia, and the United States Air Force Academy at Colorado Springs) which the President determines would be appropriate in carrying out the purposes of this Act [see Tables for classification].

"[*Personnel; property; records; and funds*] (b) So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available to, or under the jurisdiction of, the Secretary of the Army, the Secretary of the Navy, and the Secretary of the Air Force, in connection with functions transferred by this Act, as determined by the Director of the Office of Management and Budget, are transferred to the Administrator of Veterans' Affairs.

"[*Savings provision; offenses, penalties and forfeitures*] (c) All offenses committed and all penalties and forfeitures incurred under any of the provisions of law amended or repealed by this Act may be prosecuted and punished in the same manner and with the same effect as if such amendments or repeals had not been made.

"[*Same; rules; regulations, permits, and other privileges*] (d) All rules, regulations, orders, permits, and other privileges issued or granted by the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force with respect to the cemeteries, memorials, and monuments transferred to the Veterans' Administration by this Act, unless contrary to the provisions of such Act, shall remain in full force and effect until modified, suspended, overruled, or otherwise changed by the Administrator of Veterans' Affairs, by any court of competent jurisdiction, or by operation of law.

"[*Abatement of proceedings; proceedings against United States or officer of Veterans' Administration; judicial orders; continuation of suits by Administrator*] (e) No suit, action, or other proceeding commenced by or against any officer in his official capacity as an official of the Department of the Army, the Department of the Navy, or the Department of the Air Force with respect to functions transferred under subsection (a) or (c) of this section shall abate by reason of the enactment of this section. No cause of action by or against any such department with respect to functions transferred under such subsection (a) or by or against any officer thereof in his official capacity, shall abate by reason of the enactment of this section. Causes of actions, suits, or other proceedings may be asserted by or against the United States or such officer of the Veterans' Administration as may be appropriate and, in any litigation pending when this section takes effect, the court may at any time, upon its own motion or that of any party, enter an order which will give effect to the provisions of this subsection. If before the date this section takes effect [see note hereunder], any such department, or officer thereof in his official capacity, is a party to a suit with respect to any function so transferred, such suit shall be continued by the Administrator of Veterans' Affairs."

[Section 6 of Pub. L. 93-43 effective Sept. 1, 1973, or such earlier date as the President may prescribe and publish in the Federal Register, see section 10(c) of Pub. L. 93-43, set out as an Effective Date note under section 2306 of this title.]

[The United States Soldiers' and Airmen's Home and the United States Naval Home were incorporated into the Armed Forces Retirement Home by section 411 of Title 24, Hospitals and Asylums.]

USE OF FLAT GRAVE MARKERS AT SANTA FE NATIONAL CEMETERY, NEW MEXICO

Pub. L. 106-117, title VI, §612, Nov. 30, 1999, 113 Stat. 1580, provided that: "Notwithstanding section 2404(c)(2) of title 38, United States Code, the Secretary [of Veterans Affairs] may provide for flat grave markers at the Santa Fe National Cemetery, New Mexico."

INDEPENDENT STUDY ON IMPROVEMENTS TO VETERANS' CEMETERIES

Pub. L. 106-117, title VI, §613, Nov. 30, 1999, 113 Stat. 1581, provided that:

"(a) STUDY.—Not later than 180 days after the date of the enactment of this Act [Nov. 30, 1999], the Secretary [of Veterans Affairs] shall enter into a contract with one or more qualified organizations to conduct a study of national cemeteries described in subsection (b). For purposes of this section, an entity of Federal, State, or local government is not a qualified organization.

"(b) MATTERS STUDIED.—(1) The study conducted pursuant to the contract entered into under subsection (a) shall include an assessment of each of the following:

"(A) The one-time repairs required at each national cemetery under the jurisdiction of the National Cemetery Administration of the Department of Veterans Affairs to ensure a dignified and respectful setting appropriate to such cemetery, taking into account the variety of age, climate, and burial options at individual national cemeteries.

"(B) The feasibility of making standards of appearance of active national cemeteries, and the feasibility of making standards of appearance of closed national cemeteries, commensurate with standards of appearance of the finest cemeteries in the world.

"(C) The number of additional national cemeteries that will be required for the interment and memorialization in such cemeteries of individuals qualified under chapter 24 of title 38, United States Code, who die after 2005.

"(D) The advantages and disadvantages of the use by the National Cemetery Administration of flat grave markers and upright grave markers.

"(E) The current condition of flat grave marker sections at each of the national cemeteries.

“(2) In presenting the assessment of additional national cemeteries required under paragraph (1)(C), the report shall identify by five-year period, beginning with 2005 and ending with 2020, the following:

“(A) The number of additional national cemeteries required during each such five-year period.

“(B) With respect to each such five-year period, the areas in the United States with the greatest concentration of veterans whose needs are not served by national cemeteries or State veterans' cemeteries.

“(c) REPORT.—(1) Not later than one year after the date on which a qualified organization enters into a contract under subsection (a), the organization shall submit to the Secretary a report setting forth the results of the study conducted and conclusions of the organization with respect to such results.

“(2) Not later than 120 days after the date on which a report is submitted under paragraph (1), the Secretary shall transmit to the Committees on Veterans' Affairs of the House of Representatives and the Senate a copy of the report, together with any comments on the report that the Secretary considers appropriate.”

GRAVE MARKERS IN CERTAIN LOCATIONS

Pub. L. 103-446, title VIII, §804, Nov. 2, 1994, 108 Stat. 4675, provided that: “Notwithstanding section 2404(c)(2) of title 38, United States Code, the Secretary of Veterans Affairs may provide for flat grave markers at the Willamette National Cemetery, Oregon.”

Section 11 of Pub. L. 102-54, as amended by Pub. L. 102-83, §5(c)(2), Aug. 6, 1991, 105 Stat. 406, provided that: “Notwithstanding section 2404(c)(2) of title 38, United States Code, the Secretary may provide for flat grave markers in that section of the Florida National Cemetery in which preplaced grave liners were installed before July 30, 1988.”

Section 341(b) of Pub. L. 100-322, as amended by Pub. L. 102-83, §5(c)(2), Aug. 6, 1991, 105 Stat. 406, provided that: “Notwithstanding section 2404(c)(2) of title 38, United States Code, the Administrator may provide for flat grave markers in the cases of the national cemeteries in Riverside, California; Bourne, Massachusetts; Augusta, Michigan; and Indiantown Gap, Pennsylvania; and the proposed national cemetery approved by the Administrator, as of July 31, 1987, for Northern California.”

FUNCTIONS, POWERS, AND DUTIES OF SECRETARIES UNAFFECTED

Repeal of sections 271 to 276, 278 to 279d, 281 to 282, 286 to 290, and 296 of Title 24, Hospitals and Asylums, and enactment of provisions set out as notes under sections 271 to 276 of Title 24 without effect upon functions, powers, and duties of secretaries of the military departments with respect to cemeteries, memorials, or monuments under the jurisdiction of the secretary concerned to which the transfer provisions of section 6(a) of Pub. L. 93-43, set out as a note above, do not apply, see section 7(b) of Pub. L. 93-43, set out as a note under sections 271 to 276 of Title 24.

STUDIES; RECOMMENDATIONS TO CONGRESS

Section 3 of Pub. L. 93-43 authorized the Administrator to conduct a comprehensive study concerning the criteria governing the development and operation of the National Cemetery System, including the concept of regional cemeteries, the relationship of the National Cemetery System to other burial benefits provided by Federal and State Governments to servicemen and veterans, steps taken to conform the existing system to the recommended criteria, private burial and funeral costs in the United States, current headstone and marker programs, and the marketing and sales practices of non-Federal cemeteries and interment facilities, and to submit his recommendations within twelve months after the convening of the first session of the Ninety-third Congress and also authorized the Administrator, in conjunction with the Secretary of Defense, to conduct a comprehensive study concerning the advis-

ability of including Arlington National Cemetery within the National Cemetery System, the appropriateness of maintaining the present eligibility requirements for burial at Arlington National Cemetery and the advisability of establishing another national cemetery, and to submit the results of their joint recommendations within twelve months after the convening of the first session of the Ninety-third Congress.

§ 2405. Disposition of inactive cemeteries

(a) The Secretary may transfer, with the consent of the agency concerned, any inactive cemetery, burial plot, memorial, or monument within the Secretary's control to the Department of the Interior for maintenance as a national monument or park, or to any other agency of the Government. Any cemetery transferred to the Department of the Interior shall be administered by the Secretary of the Interior as a part of the National Park System, and funds appropriated to the Secretary of the Interior for such system shall be available for the management and operation of such cemetery.

(b) The Secretary may also transfer and convey all right, title, and interest of the United States in or to any inactive cemetery or burial plot, or portion thereon, to any State, county, municipality, or proper agency thereof, in which or in the vicinity of which such cemetery or burial plot is located, but in the event the grantee shall cease or fail to care for and maintain the cemetery or burial plot or the graves and monuments contained therein in a manner satisfactory to the Secretary, all such right, title, and interest transferred or conveyed by the United States, shall revert to the United States.

(c) If a cemetery not under the control of the National Cemetery Administration has been or is to be discontinued, the Secretary may provide for the removal of remains from that cemetery to any cemetery under the control of such Administration. The Secretary may also provide for the removal of the remains of any veteran from a place of temporary interment, or from an abandoned grave or cemetery, to a national cemetery.

(Added Pub. L. 93-43, §2(a), June 18, 1973, 87 Stat. 77, §1005; amended Pub. L. 99-576, title VII, §701(56), Oct. 28, 1986, 100 Stat. 3295; Pub. L. 101-237, title III, §313(b)(1), (4), Dec. 18, 1989, 103 Stat. 2077; renumbered §2405, Pub. L. 102-83, §5(a), Aug. 6, 1991, 105 Stat. 406; Pub. L. 105-368, title IV, §403(c)(7), Nov. 11, 1998, 112 Stat. 3339.)

AMENDMENTS

1998—Subsec. (c). Pub. L. 105-368, in first sentence, substituted “under the control of the National Cemetery Administration” for “within the National Cemetery System” and “under the control of such Administration” for “within such System”.

1991—Pub. L. 102-83 renumbered section 1005 of this title as this section.

1989—Subsec. (a). Pub. L. 101-237, §313(b)(4), inserted “of the Interior” after “funds appropriated to the Secretary”.

Pub. L. 101-237, §313(b)(1), substituted “Secretary may transfer” for “Administrator may transfer” and “Secretary's” for “Administrator's”.

Subsecs. (b), (c). Pub. L. 101-237, §313(b)(1), substituted “Secretary” for “Administrator” wherever appearing.

1986—Subsec. (a). Pub. L. 99-576, §701(56)(A), substituted “the Administrator's” for “his”.

Subsec. (c). Pub. L. 99-576, §701(56)(B), substituted "The Administrator" for "He".

§ 2406. Acquisition of lands

As additional lands are needed for national cemeteries, they may be acquired by the Secretary by purchase, gift (including donations from States or political subdivisions thereof), condemnation, transfer from other Federal agencies, exchange, or otherwise, as the Secretary determines to be in the best interest of the United States.

(Added Pub. L. 93-43, §2(a), June 18, 1973, 87 Stat. 78, §1006; amended Pub. L. 99-576, title VII, §701(57), Oct. 28, 1986, 100 Stat. 3295; Pub. L. 101-237, title III, §313(b)(1), Dec. 18, 1989, 103 Stat. 2077; renumbered §2406, Pub. L. 102-83, §5(a), Aug. 6, 1991, 105 Stat. 406; Pub. L. 108-454, title VI, §603, Dec. 10, 2004, 118 Stat. 3624.)

AMENDMENTS

2004—Pub. L. 108-454 inserted "exchange," after "agencies,".

1991—Pub. L. 102-83 renumbered section 1006 of this title as this section.

1989—Pub. L. 101-237 substituted "Secretary" for "Administrator" wherever appearing.

1986—Pub. L. 99-576 substituted "the Administrator" for "he".

§ 2407. Authority to accept and maintain suitable memorials

Subject to such restrictions as the Secretary may prescribe, the Secretary may accept gifts, devise, or bequests from legitimate societies and organizations or reputable individuals, made in any manner, which are made for the purpose of beautifying national cemeteries, or are determined to be beneficial to such cemetery. The Secretary may make land available for this purpose, and may furnish such care and maintenance as the Secretary deems necessary.

(Added Pub. L. 93-43, §2(a), June 18, 1973, 87 Stat. 78, §1007; amended Pub. L. 99-576, title VII, §701(58), Oct. 28, 1986, 100 Stat. 3296; Pub. L. 101-237, title III, §313(b)(1), Dec. 18, 1989, 103 Stat. 2077; renumbered §2407, Pub. L. 102-83, §5(a), Aug. 6, 1991, 105 Stat. 406.)

AMENDMENTS

1991—Pub. L. 102-83 renumbered section 1007 of this title as this section.

1989—Pub. L. 101-237 substituted "Secretary" for "Administrator" wherever appearing.

1986—Pub. L. 99-576 substituted "the Administrator" for "he" in two places and "The Administrator" for "He".

§ 2408. Aid to States for establishment, expansion, and improvement of veterans' cemeteries

(a) Subject to subsection (b) of this section, the Secretary may make grants to any State to assist such State in establishing, expanding, or improving veterans' cemeteries owned by such State. Any such grant may be made only upon submission of an application to the Secretary in such form and manner, and containing such information, as the Secretary may require.

(b) Grants under this section shall be subject to the following conditions:

(1) The amount of a grant under this section may not exceed—

(A) in the case of the establishment of a new cemetery, the sum of: (i) the cost of improvements to be made on the land to be converted into a cemetery; and (ii) the cost of initial equipment necessary to operate the cemetery; and

(B) in the case of the expansion or improvement of an existing cemetery, the sum of: (i) the cost of improvements to be made on any land to be added to the cemetery; and (ii) the cost of any improvements to be made to the existing cemetery.

(2) If the amount of a grant under this section is less than the amount of costs referred to in subparagraph (A) or (B) of paragraph (1), the State receiving the grant shall contribute the excess of such costs over the grant.

(3) If a State that has received a grant under this section to establish, expand, or improve a veterans' cemetery ceases to own such cemetery, ceases to operate such cemetery as a veterans' cemetery, or uses any part of the funds provided through such grant for a purpose other than that for which the grant was made, the United States shall be entitled to recover from such State the total of all grants made under this section to such State in connection with such cemetery.

(c)(1) In addition to the conditions specified in subsection (b) of this section, any grant to a State under this section to assist such State in establishing a veterans' cemetery shall be made on the condition that such cemetery shall conform to such standards and guidelines relating to site selection, planning, and construction as the Secretary may by regulation prescribe. In prescribing regulations for the purposes of the preceding sentence, the Secretary shall take into account the standards and guidelines for site selection, planning, and construction that are applicable to cemeteries under the control of the National Cemetery Administration, including those provided in subsections (b), (c), and (d) of section 2404 of this title.

(2) The Secretary may by regulation prescribe such additional terms and conditions for grants under this section as the Secretary considers appropriate.

(d)(1) In addition to the conditions specified in subsections (b) and (c), any grant made to a State under this section to assist such State in establishing, expanding, or improving a veterans' cemetery shall be made subject to the condition specified in paragraph (2).

(2) For purposes of paragraph (1), the condition described in this paragraph is that, after the date of the receipt of the grant, such State prohibit the interment or memorialization in that cemetery of a person described in section 2411(b) of this title, subject to the receipt of notice described in subsection (a)(2) of such section, except that for purposes of this subsection—

(A) such notice shall be furnished to an appropriate official of such State; and

(B) a finding described in subsection (b)(3) of such section shall be made by an appropriate official of such State.

(e) Amounts appropriated to carry out this section shall remain available until expended. If

all funds from a grant under this section have not been utilized by a State for the purpose for which the grant was made within three years after such grant is made, the United States shall be entitled to recover any such unused grant funds from such State.

(Added Pub. L. 95-476, title II, § 202(b)(1), Oct. 18, 1978, 92 Stat. 1504, § 1008; amended Pub. L. 98-223, title II, § 202, Mar. 2, 1984, 98 Stat. 41; Pub. L. 100-322, title III, § 343, May 20, 1988, 102 Stat. 540; Pub. L. 100-687, div. B, title XVI, § 1601, Nov. 18, 1988, 102 Stat. 4137; Pub. L. 101-237, title III, § 313(b)(1), Dec. 18, 1989, 103 Stat. 2077; renumbered § 2408 and amended Pub. L. 102-83, § 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 103-446, title VIII, § 803, Nov. 2, 1994, 108 Stat. 4675; Pub. L. 105-116, § 2, Nov. 21, 1997, 111 Stat. 2382; Pub. L. 105-368, title IV, §§ 403(c)(8), 404(a)(1), (b), (c), title X, § 1005(b)(5), Nov. 11, 1998, 112 Stat. 3339, 3365; Pub. L. 108-183, title V, § 503, Dec. 16, 2003, 117 Stat. 2667.)

AMENDMENTS

2003—Subsec. (a). Pub. L. 108-183, § 503(a), struck out par. (1) designation before “Subject to” and struck out par. (2) which authorized amounts for fiscal years 1999 through 2004 for grants.

Subsec. (d)(1). Pub. L. 108-183, § 503(c), struck out “on or after November 21, 1997,” after “grant made”.

Subsec. (e). Pub. L. 108-183, § 503(b), substituted “Amounts appropriated to carry out this section” for “Sums appropriated under subsection (a) of this section”.

1998—Subsec. (a)(2). Pub. L. 105-368, § 404(c), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “There is authorized to be appropriated \$5,000,000 for fiscal year 1980 and for each of the four succeeding fiscal years, and such sums as may be necessary for fiscal year 1985 and for each of the fourteen succeeding fiscal years, for the purpose of making grants under paragraph (1) of this subsection.”

Subsec. (b)(1), (2). Pub. L. 105-368, § 404(a)(1), amended pars. (1) and (2) generally. Prior to amendment, pars. (1) and (2) read as follows:

“(1) The amount of any grant under this section may not exceed an amount equal to 50 percent of the total of the value of the land to be acquired or dedicated for the cemetery and the cost of the improvements to be made on such land, with the remaining amount to be contributed by the State receiving the grant.

“(2) If at the time of a grant under this section the State receiving the grant dedicates for the purposes of the cemetery involved land already owned by the State, the value of such land may be considered in determining the amount of the State's contribution under paragraph (1) of this subsection, but the value of such land may not be used for more than an amount equal to 50 percent of the amount of such contribution and may not be used as part of such State's contribution for any subsequent grant under this section.”

Subsec. (c)(1). Pub. L. 105-368, § 403(c)(8), substituted “under the control of the National Cemetery Administration” for “in the National Cemetery System”.

Subsec. (d)(1). Pub. L. 105-368, § 1005(b)(5), substituted “November 21, 1997,” for “the date of the enactment of this subsection” and “subject to the condition specified in” for “on the condition described in”.

Subsec. (e). Pub. L. 105-368, § 401(b), substituted “shall remain available until expended” for “shall remain available until the end of the second fiscal year following the fiscal year for which they are appropriated” in first sentence.

1997—Subsecs. (d), (e). Pub. L. 105-116 added subsec. (d) and redesignated former subsec. (d) as (e).

1994—Subsec. (a)(2). Pub. L. 103-446 substituted “fourteen” for “nine”.

1991—Pub. L. 102-83, § 5(a), renumbered section 1008 of this title as this section.

Subsec. (c)(1). Pub. L. 102-83, § 5(c)(1), substituted “2404” for “1004”.

1989—Subsecs. (a)(1), (c). Pub. L. 101-237 substituted “Secretary” for “Administrator” wherever appearing.

1988—Subsec. (a)(2). Pub. L. 100-687 substituted “nine” for second reference to “four”.

Subsec. (b)(1). Pub. L. 100-322, § 343(1)–(3), redesignated par. (2) as (1), substituted “percent” for “per centum”, and struck out former par. (1) which read as follows: “No State may receive grants under this section in any fiscal year in a total amount in excess of 20 per centum of the total amount appropriated for such grants for such fiscal year.”

Subsec. (b)(2). Pub. L. 100-322, § 343(2)–(4), redesignated par. (3) as (2) and substituted “percent” for “per centum” and “paragraph (1)” for “paragraph (2)”. Former par. (2) redesignated (1).

Subsec. (b)(3), (4). Pub. L. 100-322, § 343(2), redesignated par. (4) as (3). Former par. (3) redesignated (2).

1984—Subsec. (a)(2). Pub. L. 98-223 inserted “, and such sums as may be necessary for fiscal year 1985 and for each of the four succeeding fiscal years,” after “fiscal years”.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-368, title IV, § 404(a)(2), Nov. 11, 1998, 112 Stat. 3339, provided that: “The amendment made by paragraph (1) [amending this section] shall apply with respect to grants under section 2408 of title 38, United States Code, made after the end of the 60-day period beginning on the date of the enactment of this Act [Nov. 11, 1998].”

EFFECTIVE DATE

Section effective Oct. 18, 1978, see section 205(a) of Pub. L. 95-476, set out as an Effective Date of 1978 Amendment note under section 2303 of this title.

§ 2409. Memorial areas in Arlington National Cemetery

(a) The Secretary of the Army may set aside, when available, a suitable area or areas in Arlington National Cemetery, Virginia, to honor the memory of members of the Armed Forces and veterans—

(1) who are missing in action;

(2) whose remains have not been recovered or identified;

(3) whose remains were buried at sea, whether by the member's or veteran's own choice or otherwise;

(4) whose remains were donated to science; or

(5) whose remains were cremated and whose ashes were scattered without interment of any portion of the ashes.

(b) Under regulations prescribed by the Secretary of the Army, appropriate memorials or markers may be erected in Arlington National Cemetery to honor the memory of those individuals, or group of individuals, referred to in subsection (a) of this section.

(Added Pub. L. 99-576, title IV, § 413(a), Oct. 28, 1986, 100 Stat. 3284, § 1009; amended Pub. L. 101-237, title III, § 313(b)(5), Dec. 18, 1989, 103 Stat. 2077; renumbered § 2409, Pub. L. 102-83, § 5(a), Aug. 6, 1991, 105 Stat. 406.)

AMENDMENTS

1991—Pub. L. 102-83 renumbered section 1009 of this title as this section.

1989—Subsec. (b). Pub. L. 101-237 inserted “of the Army” after “Secretary”.

COLUMBIA ORBITER MEMORIAL

Pub. L. 108-11, title III, Apr. 16, 2003, 117 Stat. 603, provided that:

“SEC. 301. SHORT TITLE.

“This title may be cited as the ‘Columbia Orbiter Memorial Act’.

“SEC. 302. CONSTRUCTION OF MEMORIAL TO CREW OF COLUMBIA ORBITER AT ARLINGTON NATIONAL CEMETERY.

“(a) CONSTRUCTION REQUIRED.—The Secretary of the Army shall, in consultation with the Administrator of the National Aeronautics and Space Administration, construct at an appropriate place in Arlington National Cemetery, Virginia, a memorial marker honoring the seven members of the crew of the Columbia Orbiter who died on February 1, 2003, over the State of Texas during the landing of space shuttle mission STS-107.

“(b) AVAILABILITY OF FUNDS.—Of the amount appropriated or otherwise made available by title II of the Department of Defense Appropriations Act, 2003 (Public Law 107-248) under the heading ‘Operation and Maintenance, Army’ [116 Stat. 1521], \$500,000 shall be available for the construction of the memorial marker required by subsection (a).

“SEC. 303. DONATIONS FOR MEMORIAL FOR CREW OF COLUMBIA ORBITER.

“(a) AUTHORITY TO ACCEPT DONATIONS.—The Administrator of the National Aeronautics and Space Administration may accept gifts and donations of services, money, and property (including personal, tangible, or intangible property) for the purpose of an appropriate memorial or monument to the seven members of the crew of the Columbia Orbiter who died on February 1, 2003, over the State of Texas during the landing of space shuttle mission STS-107, whether such memorial or monument is constructed by the Administrator or is the memorial marker required by section 302.

“(b) TRANSFER.—(1) The Administrator may transfer to the Secretary of the Army any services, money, or property accepted by the Administrator under subsection (a) for the purpose of the construction of the memorial marker required by section 302.

“(2) Any moneys transferred to the Secretary under paragraph (1) shall be merged with amounts in the account referred to in subsection (b) of section 302, and shall be available for the purpose referred to in that subsection.

“(c) EXPIRATION OF AUTHORITY.—The authority of the Administrator to accept gifts and donations under subsection (a) shall expire 5 years after the date of the enactment of this Act [Apr. 16, 2003].”

AUTHORIZATION OF PLACEMENT OF A MEMORIAL IN ARLINGTON NATIONAL CEMETERY HONORING WORLD WAR II VETERANS WHO FOUGHT IN THE BATTLE OF THE BULGE

Pub. L. 107-330, title II, §204, Dec. 6, 2002, 116 Stat. 2824, provided that: “The Secretary of the Army is authorized to place in Arlington National Cemetery a memorial marker honoring veterans who fought in the battle in the European theater of operations during World War II known as the Battle of the Bulge.”

§ 2410. Burial of cremated remains in Arlington National Cemetery

(a) The Secretary of the Army shall designate an area of appropriate size within Arlington National Cemetery for the unmarked interment, in accordance with such regulations as the Secretary may prescribe, of the ashes of persons eligible for interment in Arlington National Cemetery whose remains were cremated. Such area shall be an area not suitable for the burial of casketed remains.

(b) The Secretary of each military department shall make available appropriate forms on which

those members of the Armed Forces who so desire may indicate their desire to be buried within the area to be designated under subsection (a).

(Added Pub. L. 101-237, title V, §502(a), Dec. 18, 1989, 103 Stat. 2093, §1010; amended Pub. L. 102-54, §14(b)(22), June 13, 1991, 105 Stat. 284; renumbered §2410, Pub. L. 102-83, §5(a), Aug. 6, 1991, 105 Stat. 406.)

AMENDMENTS

1991—Pub. L. 102-83 renumbered section 1010 of this title as this section.

Subsec. (b). Pub. L. 102-54 substituted “each military department” for “the military departments”.

§ 2411. Prohibition against interment or memorialization in the National Cemetery Administration or Arlington National Cemetery of persons committing Federal or State capital crimes

(a)(1) In the case of a person described in subsection (b), the appropriate Federal official may not—

(A) inter the remains of such person in a cemetery in the National Cemetery Administration or in Arlington National Cemetery; or

(B) honor the memory of such person in a memorial area in a cemetery in the National Cemetery Administration (described in section 2403(a) of this title) or in such an area in Arlington National Cemetery (described in section 2409(a) of this title).

(2) In the case of a person described in subsection (b)(1) or (b)(2), the prohibition under paragraph (1) shall not apply unless written notice of a conviction referred to in subsection (b)(1) or (b)(2), as the case may be, is received by the appropriate Federal official before such official approves an application for the interment or memorialization of such person. Such written notice shall be furnished to such official by the Attorney General, in the case of a Federal capital crime, or by an appropriate State official, in the case of a State capital crime.

(b) A person referred to in subsection (a) is any of the following:

(1) A person who has been convicted of a Federal capital crime and whose conviction is final (other than a person whose sentence was commuted by the President).

(2) A person who has been convicted of a State capital crime and whose conviction is final (other than a person whose sentence was commuted by the Governor of a State).

(3) A person who—

(A) is found (as provided in subsection (c)) to have committed a Federal capital crime or a State capital crime, but

(B) has not been convicted of such crime by reason of such person not being available for trial due to death or flight to avoid prosecution.

(c) A finding under subsection (b)(3) shall be made by the appropriate Federal official. Any such finding may only be made based upon a showing of clear and convincing evidence, after an opportunity for a hearing in a manner prescribed by the appropriate Federal official.

(d) For purposes of this section:

(1) The term “Federal capital crime” means an offense under Federal law for which a sentence of imprisonment for life or the death penalty may be imposed.

(2) The term “State capital crime” means, under State law, the willful, deliberate, or premeditated unlawful killing of another human being for which a sentence of imprisonment for life or the death penalty may be imposed.

(3) The term “appropriate Federal official” means—

(A) the Secretary, in the case of the National Cemetery Administration; and

(B) the Secretary of the Army, in the case of Arlington National Cemetery.

(Added Pub. L. 105-116, §1(a), Nov. 21, 1997, 111 Stat. 2381; amended Pub. L. 105-368, title IV, §403(d)(1), Nov. 11, 1998, 112 Stat. 3339; Pub. L. 107-330, title II, §202, Dec. 6, 2002, 116 Stat. 2824; Pub. L. 109-163, div. A, title VI, §662(a), Jan. 6, 2006, 119 Stat. 3314.)

AMENDMENTS

2006—Subsec. (b)(1). Pub. L. 109-163, §662(a)(1)(A), substituted “and whose conviction is final (other than a person whose sentence was commuted by the President)” for “for which the person was sentenced to death or life imprisonment”.

Subsec. (b)(2). Pub. L. 109-163, §662(a)(1)(B), substituted “and whose conviction is final (other than a person whose sentence was commuted by the Governor of a State)” for “for which the person was sentenced to death or life imprisonment without parole”.

Subsec. (d)(1). Pub. L. 109-163, §662(a)(2)(A), substituted “a sentence of imprisonment for life or the death penalty may be imposed” for “the death penalty or life imprisonment may be imposed”.

Subsec. (d)(2). Pub. L. 109-163, §662(a)(2)(B), substituted “a sentence of imprisonment for life or the death penalty may be imposed” for “the death penalty or life imprisonment without parole may be imposed”.

2002—Subsec. (a)(2). Pub. L. 107-330 substituted “In the case of a person described in subsection (b)(1) or (b)(2), the prohibition” for “The prohibition” and “referred to in subsection (b)(1) or (b)(2), as the case may be,” for “or finding under subsection (b)”.

1998—Pub. L. 105-368, §403(d)(1), substituted “Administration” for “System” in section catchline.

Subsecs. (a)(1)(A), (B), (d)(3)(A). Pub. L. 105-368, §403(d)(1), substituted “Administration” for “System”.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-163 applicable with respect to funerals and burials that occur on or after Jan. 6, 2006, see section 662(e) of Pub. L. 109-163, set out as a note under section 985 of Title 10, Armed Forces.

EFFECTIVE DATE

Section 1(c) of Pub. L. 105-116 provided that: “Section 2411 of title 38, United States Code, as added by subsection (a), shall apply with respect to applications for interment or memorialization made on or after the date of the enactment of this Act [Nov. 21, 1997].”

REGULATIONS

Pub. L. 109-163, div. A, title VI, §662(d)(1), Jan. 6, 2006, 119 Stat. 3315, provided that: “The Secretary of Veterans Affairs shall prescribe regulations to ensure that a person is not interred in any cemetery in the National Cemetery System unless a good faith effort has been made to determine whether such person is ineligible for such interment or honors by reason of being a person described in section 2411(b) of title 38, United States Code, or is otherwise ineligible for such interment under Federal law.”

§ 2412. Lease of land and buildings

(a) **LEASE AUTHORIZED.**—The Secretary may lease any undeveloped land and unused or underutilized buildings, or parts or parcels thereof, belonging to the United States and part of the National Cemetery Administration.

(b) **TERM.**—The term of a lease under subsection (a) may not exceed 10 years.

(c) **LEASE TO PUBLIC OR NONPROFIT ORGANIZATIONS.**—(1) A lease under subsection (a) to any public or nonprofit organization may be made without regard to the provisions of section 3709 of the Revised Statutes (41 U.S.C. 5).

(2) Notwithstanding section 1302 of title 40 or any other provision of law, a lease under subsection (a) to any public or nonprofit organization may provide for the maintenance, protection, or restoration of the leased property by the lessee, as a part or all of the consideration for the lease.

(d) **NOTICE.**—Before entering into a lease under subsection (a), the Secretary shall give appropriate public notice of the intention of the Secretary to enter into the lease in a newspaper of general circulation in the community in which the lands or buildings concerned are located.

(e) **NATIONAL CEMETERY ADMINISTRATION FACILITIES OPERATION FUND.**—(1) There is established on the book of the Treasury an account to be known as the “National Cemetery Administration Facilities Operation Fund” (in this section referred to as the “Fund”).

(2) The Fund shall consist of the following:

(A) Proceeds from the lease of land or buildings under this section.

(B) Proceeds of agricultural licenses of lands of the National Cemetery Administration.

(C) Any other amounts appropriated to or otherwise authorized for deposit in the Fund by law.

(3) Amounts in the Fund shall be available to cover costs incurred by the National Cemetery Administration in the operation and maintenance of property of the Administration.

(4) Amounts in the Fund shall remain available until expended.

(Added Pub. L. 108-454, title VI, §602(a), Dec. 10, 2004, 118 Stat. 3623.)

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